



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/591,126

08/30/2006

Jacques Thomasset

2590-166

7345

23117

7590

07/02/2009

NIXON & VANDERHYE, PC  
901 NORTH GLEBE ROAD, 11TH FLOOR  
ARLINGTON, VA 22203

EXAMINER

KASHNIKOW, ERIK

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,126	<b>Applicant(s)</b> THOMASSET, JACQUES	
	<b>Examiner</b> ERIK KASHNIKOW	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/18/09 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-14 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. The cited phraseology clearly signifies a “negative” or “exclusionary” limitation for which the applicants have no support in the original disclosure. Negative limitations in a claim which do not appear in the specification as filed introduce new concepts and

Art Unit: 1794

violate the description requirement of 35 USC 112, first paragraph, *Ex Parte Grasselli, Suresh, and Miller*, 231 USPQ 393, 394 (Bd. Pat. App. and Inter. 1983); 783 F. 2d 453.

The insertion of the above phraseology as described above positively excludes any previous compression molding, however, there is no support in the present specification for such exclusions. While the present specification is silent with respect to “prior to any compression molding”, is noted that as stated in MPEP 2173.05(i), the “mere absence of a positive recitation is not the basis for an exclusion.”

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

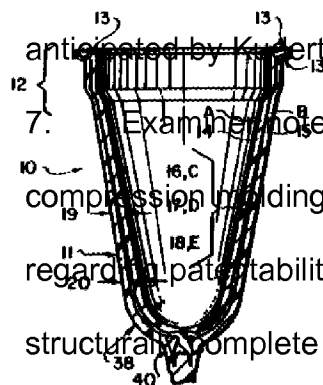
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

#### **FIG. 1A**

6. Claims 1, 2, 4-9 and 11-12 are rejected under 35 U.S.C. 102(b) as being

anticipated by Kudert, et al. (US 6,332, 767).

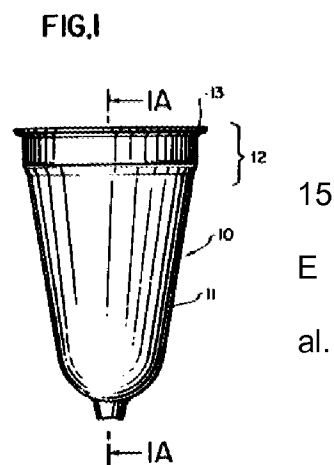


7. Examiner notes that the line “for the realization of multilayer objects by compression molding” is an intended use of the dose, and does not carry any weight regarding patentability. It has been determined that where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation (See MPEP 2111.02 and *Kropa v. Robie*, 187 F.2d at 152, 88 USPQ2d at 480-81).

8. Examiner points out that claims 6-12 (of which only 6-9 and 11-12 are dealt with in this section) will be treated as product by process claims (for more information on product by process claims see MPEP 2113).

9. In regards to claims 1 and 5 Kudert et al. teach a parison (which correlates to Applicant's Dose), which comprises 2 outer layers which may or may not be the same (column 27 lines line 48- column 28 line 1), and 3 inner layers, one being a barrier layer and the other two, on either side of the barrier layer are adhesive layers (column 27 line 48 column 28 line 19).

Figures 1 and 1A show an example of this parison, and indicate that it would have an axis of symmetry, with 14 and representing the outer layers, C the barrier layer, and D and the other two on the other side of the barrier layer. Kudert et teach that the parisons are formed by injection molding (column 35 line 65 column 36 line 15), and is silent with regards to any compression molding taking place, as such, the parisons of Kudert et al. meet the limitation of a concave surface being present prior to any compression molding.

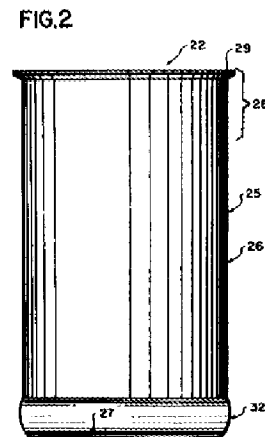


10. In regards to claims 2 and 4 Figures 1 and 1A show that the parison has a concave surface, which has an opening which acts as the orifice (where an orifice is defined by dictionary.com (<http://dictionary.reference.com/browse/orifice>) as a mouth like opening or hole also Figs. 1 and 1A). It is also pointed out that Kudert et al. teaches that these parisons are formed by Injection molding, which involves heating the

polymers (column 35 line 65 column 36 line 15). It is therefore inherent that at the time of their creation the polymers and therefore the parisons are in the melt state.

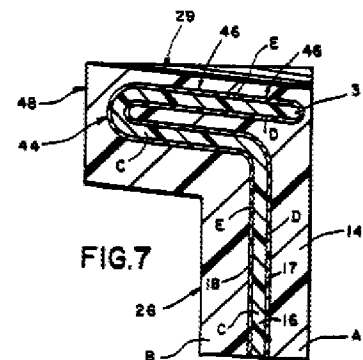
11. In regards to claim 6 Kudert et al. teach containers for the packaging of food which requires low oxygen and moisture permeability (column 1 lines 30-40).

12. Kudert teaches an embodiment wherein the container comprises a structure layer and a barrier layer embedded within the structural layer (column 122 line 5-10 and column 7 line 52 column 8 line 7).



13. In regards to claim 6 Kudert et al. teach an embodiment wherein the article is a can shaped container (Fig. 2), and teach that the barrier layer (in this case the functional layer) has a fold in it (Fig 6 and 7).

14. In regards to claim 7 since the object is symmetrical and a body of revolution can be defined (and is being defined by Examiner) as any body that can rotate around the axis of symmetry, then the functional layer, would also be symmetrical around the axis of symmetry and would be able to rotate around said axis by rotating the container about the axis of symmetry.



15. In regards to claim 8 and 9 Fig 2 is an open container, and as shown in Fig 2 the opening, as it is in can shaped objects, is centered around the axis of symmetry (Fig. 2 and column 19 lines 37-38), and therefore the body of revolution is open.

16. In regards to claims 11 and 12, Fig. 2A shows an embodiment wherein the object is closed by a cap, which eliminates the orifice, and makes the object closed around the axis of symmetry (Fig. 2A and column 19 lines 39-40).

***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudert et al. (US 6,332, 767).

19. As stated above Kudert et al. teach parisons with a concave surface and articles which have a folded barrier layer within, however they are silent regarding parisons or articles in which the orifice forms a passage through the article.

20. Kudert et al. teach that this invention is for forming "containers as broadly meant" (column 28 lines 35-37). This would include pipes, which would have an orifice which forms a passage through said article. One would be motivated to form pipes from this articles to fit that which needs to be stored or to fit the needs of transferring that which needs to be stored from one container to another. It would be well within the ability of one of ordinary skill in the art to form a parison of the referenced invention with an orifice that forms a passage way through said parison, and further turning said parison into a pipe like container.

21. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akiyama et al. (US 2002/0182351).

22. Akiyama et al teach a method of making hollow bodies of a multi layer thermoplastic nature (paragraph 0001).

23. In regards to claims 13 and 14 Akiyama et al. teach a parisons formed by a coaxial coextrusion process (paragraph 0122 and figure 7) wherein the thermoplastic layers are extruded into a mold. Wherein the mold starts out rectilinearly and then narrows, which would form the concave surface (paragraph 00124 and figure 11. It is pointed out in figure 11 that the mold is shown in an open position and represented by reference number 10, when closed reference number 21 narrows the mold, and moves the plastics resulting in a concave surface). While Akiyama et al. is silent with regards to the inner layer being completely enclosed, it would be obvious ton one of ordinary skill in the art at the time of the invention to do so to more completely protect the inner layer.

24. Akiyama et al. teach that the walls 10 and section 21 of the mold are pinch of sections, or sections that slide in and pinch off the mold (paragraph 0124).

### ***Response to Arguments***

25. In regards to Applicant's arguments that a parison is different than a dose the examiner agrees and notes that the Examiner has only stated in the office action that the parison of Kudert "correlates" to Applicant's dose. Further, it is noted that not all

claims are drawn to a multilayer dose but also to a multilayer object on which Kudert's parison would clearly read. Further Applicant's statements in the declaration that the parison and dose are different due to the layer flow during the compression stage and the statement that there is no theoretical, practical or physical reason to compare a does and a perform, Examiner points out that these are conclusionary statements with no evidence presented and as such have not overcome the prior art.

26. In regards to the term before any compression molding, Examiner points out that Kudert does not disclose any compression molding, and further there does not appear to be support in the instant specification to include this limitation.

27. Applicant's arguments with respect to claims 13 and 14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow  
Examiner  
Art Unit 1794

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1794